STATE OF MICHIGAN

COURT OF APPEALS

DONALD J. HANCOCK and ELIZABETH K. HANCOCK,

Plaintiffs,

v

LOWE LAKE CORPORATION, BUCK HAVEN, INC., and MARK MANNISTO,

Defendants/Third-Party Plaintiffs-Appellants,

and

EDWARD SUROVELL CO REALTORS and CHARLES DeGRYES,

Third-Party Defendants-Appellees.

UNPUBLISHED
October 1, 1999

No. 204519
Ingham Circuit Court
LC No. 95-081533 CK

Before: Bandstra, C.J., and Jansen and Whitbeck, JJ.

PER CURIAM.

Third-party plaintiffs appeal as of right from an order granting third-party defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

On appeal, Lowe Lake first argues that the trial court erred in granting summary disposition to the realtor on Lowe Lake's claim of fraudulent misrepresentation. We disagree. We review a trial court's grant of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

Lowe Lake alleges that Charles DeGryse, a real estate agent, falsely represented to the corporation that he would only solicit back-up offers for Lowe Lake's property because a Lowe Lake shareholder, Randy Myszkier, already had an option to purchase the property. The record does not support this claim. Before signing the listing contract, either shareholder and third-party plaintiff Mark Mannisto or another shareholder informed DeGryse that Myszkier was interested in purchasing

additional shares of Lowe Lake Corporation, not the real property. This does not support an allegation that DeGryse set out to or represented that he would only seek back-up offers for the real estate. Even assuming that DeGryse knew the corporation might be sold and even assuming that he also knew the property was the corporation's only asset, the fact remains that the corporation (DeGryse's client), through its agent, could indicate a desire to sell the property outright. There would be no need for any buyer of the property to be a "back up" to another party planning to buy the corporation. Certainly, the listing contract did not contain any such contingency. Under these circumstances, we conclude that third-party plaintiffs failed to provide any evidence that DeGryse represented to Lowe Lake that he would only seek back-up offers for the property. Summary disposition regarding third-party plaintiffs' fraudulent misrepresentation claim was appropriate. *Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996).

Next, Lowe Lake argues that the trial court erred in granting summary disposition to the realtor regarding Lowe Lake's breach of fiduciary duty claim. Lowe Lake argues that there was ample evidence to support the claim that DeGryse breached his fiduciary duty to Lowe Lake Corporation by (1) failing to inform the buyers that a shareholder had an option to purchase the corporation, that all other offers accepted by Lowe Lake would be considered back-up offers, and that shareholder Mannisto's acceptance of a back-up offer was contingent upon approval by a majority of the shareholders; and (2) that DeGryse failed to adequately investigate whether Mannisto had authority to bind the corporation to the buyers' offer.

The first question is whether DeGryse breached the fiduciary duty he owed to Lowe Lake Corporation by failing to inform the buyers and their real estate agent that a shareholder had an option to purchase the corporation and that Lowe Lake would consider any offer a "back-up offer." There is no evidence that Mannisto or anyone else ever directed DeGryse to disclose to potential purchasers the fact that a shareholder had an option to purchase the corporation. The listing agreement states that DeGryse was retained to list the real estate and obtain potential purchasers of the property, culminating in the sale of the property. Moreover, the sale of the corporation to Myszkier was still being negotiated. There is no evidence that DeGryse was ever apprised of, or a part of, the continuing negotiations with Myszkier. Under these circumstances, the evidence did not support third-party plaintiffs' claim that DeGryse breached his fiduciary duty to Lowe Lake by failing to disclose the option to the buyers.

The next question is whether DeGryse breached the fiduciary duty he owed to Lowe Lake Corporation by failing to inquire whether Mannisto had authority to sign the sales contract on behalf of Lowe Lake. Persons dealing with agents are bound to ascertain the extent and nature of the agent's authority. *Cutler v Grinnell Bros*, 325 Mich 370, 376; 38 NW2d 893 (1949). However, persons dealing with an agent may rely on the agent's apparent authority. *Lehaney v New York Life Ins Co*, 307 Mich 125, 133; 11 NW2d 830 (1943). Regarding apparent authority, our Supreme Court in *Central Wholesale Co v Sefa*, 351 Mich 17, 25; 87 NW2d 94 (1957), stated:

> The general rule of law . . . is stated in 2 CJS, Agency, § 96, pp 1210, 1211, as follows:

> "Whenever the principal, by statements or conduct, places the agent in a position where he appears with reasonable certainty to be acting for the principal, or without interference suffers the agent to assume such a position, and thereby justifies those dealing with the agent in believing that he is acting within his mandate, an apparent authority results which replaces that actually conferred as the basis for determining rights and liabilities."

Here, Mannisto testified that he was an officer of the corporation, serving in the capacity as treasurer or secretary, and that he maintained the books for Lowe Lake. He informed the corporation's shareholders that he would be the legally authorized signatory for the documents on the listing and sale of the corporation's property, and when he met with DeGryse regarding the listing agreement, he told DeGryse that he was an officer of the corporation with the authority to sign legal documents on behalf of Lowe Lake. Given Mannisto's representations to DeGryse, and the lack of affirmative action on the part of Lowe Lake as a corporation to stop negotiating for the property, this Court concludes that Lowe Lake either placed Mannisto "in a position where he appear[ed] with reasonable certainty to be acting for the principal, or without interference suffer[ed] the agent to assume such a position, . . . thereby justif[ying] those dealing with the agent in believing that he [was] acting within his mandate . . . ." *Central Wholesale*, *supra*. Given this apparent authority, *id*., DeGryse was justified in assuming that Mannisto was authorized to sign the sales agreement. Third-party plaintiffs failed to provide evidence that set forth specific facts establishing a genuine issue regarding Mannisto's apparent authority. See *Duncan v Michigan Mutual Liability Co*, 67 Mich App 386, 388-389; 241 NW2d 218 (1976).

Finally, third-party plaintiffs argue that the trial court erred in imposing mediation sanctions. Third-party plaintiffs have failed to properly present this issue on appeal because they did not provide this Court with the transcripts regarding the motion for mediation sanctions as required by MCR 7.210(B)(1)(a). *Nye v Gable, Nelson & Murphy*, 169 Mich App 411, 414; 425 NW2d 797 (1988). This Court may refuse to consider issues for which the appellant failed to produce the transcript. *Myers v Jarnac*, 189 Mich App 436, 444; 474 NW2d 302 (1991); *People v Coons*, 158 Mich App 735, 740; 405 NW2d 153 (1987). Furthermore, third-party plaintiffs did not appropriately argue the merits of this issue in their brief on appeal. *Meagher v Wayne State Univ*, 222 Mich App 700, 718; 565 NW2d 401 (1997). Accordingly, this Court chooses not to review the issue.

We affirm.

/s/ Richard A. Bandstra
/s/ Kathleen Jansen
/s/ William C. Whitbeck